

**TENNESSEE
COLLECTION SERVICE BOARD
MINUTES**

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DATE: September 11, 2008

PLACE: Andrew Johnson Tower – 2nd Floor Conference Room
710 James Robertson Parkway
Nashville, Tennessee

PRESENT: Board Members:
Bart Howard, Chairman
Elizabeth Trinkler
Worrick Robinson
Shannon Polen

PRESENT: Staff Members:
Donna Hancock, Interim Director
Terrance Bond, Staff Attorney
Judy Elmore, Administrative Assistant

GUESTS:

CALL TO ORDER:

Chairman Howard called the meeting to order and the following business was transacted:

Chairman Howard introduced the newest Board member, Mr. Shannon Polen. Chairman Howard asked Mr. Polen to share a brief bio of himself.

Interim Director Donna Hancock called the roll.

The next order of business was the election of Chairman and Vice Chairman.

MOTION was made by Elizabeth Trinkler, second by Worrick Robinson, to nominate Bart Howard for the Chairman. There were no other nominations.

MOTION was made by Shannon Polen to elect Bart Howard Chairman by acclamation.

MOTION CARRIED

MOTION was made by Bart Howard, seconded by Worrick Robinson, to nominate Elizabeth Trinkler as the Vice Chairman. There were no other nominations.

MOTION was made by Shannon Polen to elect Bart Howard Chairman by acclamation.

MOTION CARRIED

MOTION was made by Worrick Robinson, seconded by Elizabeth Trinkler, to adopt the meeting agenda as presented.

MOTION CARRIED

MINUTES -

A brief discussion was held regarding the wording on page 2 of the 7/1/08 board meeting minutes pertaining to "Judgment Purchasers" and "Debt Purchasers." Board Member Worrick Robinson stated that the language in the minutes didn't seem to portray the board's decision on this issue in that entities who purchase these debts and who do not engage in the collection of them are not required to be licensed.

MOTION was made by Worrick Robinson and seconded by Elizabeth Trinkler to memorialize in today's minutes the Board's intent on 7/1/08 regarding "passive judgments" and "debt purchasers" who do not engage in collection activity.

Attorney Bond stated that he will draft a 'policy statement' on this issue and present it to the board at their next meeting for their approval.

MOTION was made by Elizabeth Trinkler and seconded by Worrick Robinson to *approve the minutes of July 1, 2008 meeting as written.*

MOTION CARRIED.

LEGAL REPORT---TERRANCE BOND, STAFF ATTORNEY

For their review, Attorney Bond presented the Board with the 'purposed' rule changes. A discussion was held regarding the changes. A date for the rulemaking hearing is yet to be determined.

Attorney Bond called for a discussion on Location Managers. He asked the board's opinion as to whether Location Managers should be working on-site at their collection agency affiliation or will the board consider the collection agency to be in compliance when or if their Location Manager works in a different state or country. The Board determined that to be in compliance with T.C.A. 62-20-108 (a)(1) every collection agency location conducting collection services in Tennessee must have a Location Manager working on site and within the agency.

From a letter of inquiry he recently received Mr. Bond raised the issue and asked the board's opinion regarding whether the experience of a bankruptcy attorney would qualify for the experience required for a Location Manager's license. The Board determined that this manner of experience would qualify an applicant to sit for the Tennessee location manager examination.

Board Member Worrick Robinson stated that as part of their duties, and to further their awareness of complaints and activities of their collection agencies, Location Managers should be required to sign the response to complaints filed against them through the Tennessee Collection Service Board.

MOTION was made by Worrick Robinson and seconded by Elizabeth Trinkler to require Location Managers to sign all responses to complaints filed against them or their collection agency or employees.

MOTION CARRIED.

DISCLAIMER

This Board is in no way responsible for the contents of the legal report. The report is presented to the Board by the Staff Attorney, Terrance Bond.

AMENDED ITEMS: Item #4, Item #12, Item #21, Item #23, Item #24

1. L08-CSB-RBS-200801336-1

Complainant alleges that Respondent, a law firm which enforces subrogation rights on behalf of insurance companies, attempted to collect an amount from him that he alleges was satisfied through payment of restitution. Respondent asserts that it has no dispute concerning Complainant's restitution payment, but is seeking payment of civil damages from Complainant on behalf of the insurer for damage to the insured's property.

Prior History: None.

Recommendation: Close with no action.

BOARD: Concurs.

2. L08-CSB-RBS-200801507-1

Complainant alleges that Respondent's agent yelled at her and threatened to report her to legal authorities after she informed Respondent's agent that the individual Respondent was seeking to contact could not be contacted at the dialed phone number. Respondent's attorney's answer to the complaint does not address the statements and indicates that collection activity on the account has ceased in light of the complaint.

Prior History: None

Recommendation: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$2,000.00.

BOARD: Concurs.

3. L08-CSB-RBS-200801670-1

Complainant alleges that Respondent continued collection efforts against him despite his claim that the amount owed was payable by insurance and had been satisfied in full. Respondent states that it attempted to obtain verification that the debt had actually been paid, and that when it finally received notice of payment from the insurance provider, that it closed the account and cleared Complainant's information from its files.

Prior History: Failure to respond to a complaint (2006), 250.00 civil penalty paid.

Recommendation: Close with no action.

BOARD: Concurs.

4. L08-CSB-RBS-200801797-1

Complainant alleges that Respondent is engaging in unlicensed collection activity and acting in violation of the FDCPA by failing to give him the "mini-miranda" warning and confirm his identity prior to continuing a collection-related call. Respondent asserts that it has confirmed that the Complainant's account with the creditor has been satisfied and that it has returned the account marked "assigned in error". The Respondent states further that it has a certificate of authority to do business in Tennessee and provided a copy of same. The Department license roster shows that this agency's application for a license was denied prior to the date of the complaint and that the last expiration date for any active license held by the agency was 2002.

Prior History: None.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$2,000.00.

FINAL RECOMMENDATION: Include a CEASE and DESIST unlicensed activity demand.

BOARD: Concurs

5. L08-CSB-RBS-200801800-1

Complainant alleges that Respondent is harassing her because Respondent continues to demand payment from her even though she is making payments toward the past due account balance. Complainant provided documentation showing that she has made payments monthly from September 2007 to February 2008 and from April 2008 to June 2008. Respondent asserts that no payment arrangements have ever been made on the account and that the Complainant's payments have been inconsistent. Respondent states further that it has attempted several times unsuccessfully to contact the Complainant after receiving an undated letter Complainant sent to them requesting that they cease and desist communication and disputing the remaining account balance. Respondent states that it ceased all communication with the Complainant after trying several times to contact the Complainant to discuss the undated letter but states that it will

continue to monitor the account and notify the Complainant of its intent should it decide to take further action.

Prior History: None

Recommendation: Close with no action.

BOARD: Concurs.

6. L08-CSB-RBS-200801508-1

Complainant alleges that Respondent is attempting to collect amounts that were never released to him and for which he is not responsible. Complainant states further that any monies actually owed are due to fraudulent activity by associates and are not properly chargeable to him. Respondent states that it has consulted with the original creditor regarding Complainant's claims and that the original creditor has confirmed the validity of the collection claim. Respondent has offered to assist the Complainant in resubmitting his dispute to the original creditor and has suspended its activities toward him.

Prior History: None.

Recommendation: Close with no action.

BOARD: Concurs.

7. L08-CSB-RBS-200801666-1

Complainant states that Respondent is liable to him for overpayment to a creditor for services rendered.

Prior History: Consumer suspected ID theft after receiving notice of an account from Respondent. Respondent immediately ceased activity once they discovered that they were contacting the wrong individual (2008), complaint was dismissed.

Recommendation: Close with no action.

BOARD: Concurs.

8. L08-CSB-RBS-200801796-1

Complainant alleges that Respondent is trying to collect a greater amount from him than it had previously agreed to accept in full settlement of the collection account. Respondent has provided documentation indicating that it has agreed to accept the payments that Complainant claims he had originally proposed to pay as settlement in full of the collection account.

Prior History: None.

Recommendation: Close with no action.

BOARD: Concurs.

9. L08-CSB-RBS-200801673-1

Complainant alleges that Respondent has repeatedly called her and left messages for her to return the call. Complainant demands to know what the calls concern. Respondent states that it has removed Complainant's number from its files and ceased all calls.

Prior History: Unlicensed activity (2006), paid \$1,000 civil penalty, Respondent has since become licensed (October 2006).

Recommendation: Close with no action.

BOARD: Concurs.

10. L08-CSB-RBS-200801676-1

Complainant alleges that Respondent sent her a dunning notice regarding an account that was not chargeable to her. Respondent states that it did send the notice, but has now determined that it has contacted the wrong individual and has ceased all efforts toward Complainant.

Prior History: None.

Recommendation: Close with no action.

BOARD: Concurs.

11. L08-CSB-RBS-200801682-1

Complainant alleges that Respondent failed to submit required information on an approved form. The Respondent has complied and submitted the requested information on the approved form as of August 14, 2008.

Prior History: None.

Recommendation: Close with a letter of warning re: timely provision of information necessary to process renewal applications for a collection service license.

BOARD: Concurs.

12. L08-CSB-RBS-200801671-1

Complainant alleges that Respondent, who is unlicensed in the State of Tennessee, contacted her twice (once by voice mail at her work number, once by voice mail on her personal cell phone) in an effort to collect a debt that they alleged she owes. Complainant alleges that Respondent also contacted her mother and disclosed the fact that she allegedly owes the debt. During the course of another call initiated by Complainant, the Respondent indicated that they were preparing to

prosecute her for passing a check drawn on insufficient funds. Respondent further threatened to come to the Complainant's place of employment if she did not pay the alleged debt.

Prior History: None.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and \$6,000.00 civil penalty.

**FINAL RECOMMENDATION: Include a CEASE and DESIST unlicensed activity demand.
BOARD: Concurs.**

13. L08-CSB-RBS-200801686-1

Complainant alleges that Respondent attempted to collect amounts from him that were payable via his insurance coverage. Respondent claims that collection efforts were warranted due to the insurer's denial of benefits because the claim for payment was not timely filed by its client. Respondent states further that due to the continuing dispute among the insurer, the Complainant-insured and the service-provider, the service provider has agreed to write the account off and the Respondent has accordingly halted all collection efforts and requested removal of its tradeline from the Complainant's credit report.

Prior History: None.

**Recommendation: Close with no action.
BOARD: Concurs.**

14. L08-CSB-RBS-200801732-1

Complainant alleges that Respondent deducted a greater amount from her account than she had authorized in payment arrangements with Respondent to satisfy a debt. Respondent provided account notes indicating that the Respondent had agreed to the amount that Respondent later deducted from her account. The notes also indicated that the Complainant called back several days after making the agreement to request that a lesser amount be deducted, but the original payment authorization had already been processed and Respondent could not honor her request. Respondent provided notarized statements from two (2) of its representatives who spoke with Complainant on the day of the transaction who indicated that she agreed to the original amount.

Prior History: None, but two other complaints open and pending disposition.

**Recommendation: Close with no action.
BOARD: Concurs.**

15. L08-CSB-RBS-200801434-1

Complainant alleges that Respondent failed to assist her in trying to obtain documentation necessary to prove fraud in the activation of an account now in collections under her name for

which she denied responsibility. Attorney for Respondent provided taped conversations between Respondent and Complainant, wherein Complainant requested a copy of the original contract creating the account so that she could provide documentation in support of her fraud claim. The Respondent advised her that no such materials could be provided and that she (Complainant) should contact the first-party creditor. Complainant responded that she had already done so and had been advised by the first party that she would need to secure documentation from the Respondent. Respondent said that she had confirmed with an operations manager that such information could not be provided. Complainant continued to explain that she could not otherwise obtain the documents and the Respondent terminated the call. Account notes provided by counsel for the Respondent indicate that the agent who terminated Complainant's call did not update account notes in light of that conversation. Complainant called back immediately and requested to speak with a supervisor. The supervisor advised the Complainant that she must request the materials she was seeking in writing and then advised her on where to mail her request. Respondent appears to be unlicensed.

Prior History: None.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and \$1,000.00 civil penalty.

BOARD: Concurs.

16. L08-CSB-RBS-200800574-1

Complainant had initially complained that Respondent continued to call his home demanding payment on an account for which he had requested validation documents. Complainant stated that he had not received the documents at the time of his complaint and that derogatory information appeared on his credit from the Respondent. I recently spoke with the Complainant, who informed me that the calls had ceased and that he had received the validation documents that he had originally requested. He was uncertain whether or not the derogatory notations had been removed from his credit report. I requested that he obtain a current copy of same and advise me if the information still appeared there. I also spoke with Respondent's counsel, who stated that Respondent's records did not indicate that credit reporting had ever occurred with regard to the Complainant, but that if any notations or an inquiry existed, to advise her and she would ensure that such items were promptly removed.

Prior History: 1) Unlicensed activity (2006), paid \$1,000.00 civil penalty, became licensed in December 2006. 2) Failure to provide required validation documents/information. Respondent provided documentation indicating that the Complainant's request came far outside the validation window and that validation had been provided within the initial communication notice, which was not returned. (2007)

The complaint was dismissed.

Recommendation: Close with no action upon receipt of proof that any derogatory notations from Respondent that appear on Complainant's credit report have been removed or updated to reflect a dispute.

BOARD: Concurs.

17. L08-CSB-RBS-200800790-1

Complainant alleges that Respondent calls him excessively regarding an account that he does not owe and that Respondent's agents request personal information from him, which he refuses to provide, stating that "if they were legit, they should have the information already." Respondent states that it was calling the individual in order to determine if they were pursuing the correct individual and to prevent unauthorized disclosure of confidential information to a third party. Respondent states that it has also closed the account and ceased all collection activity relative to the Complainant.

Prior History: One complaint re: solicitation of postdated checks (2008) Complaint was closed with a letter of warning re: solicitation of post-dated checks.

Recommendation: Close with no action.

BOARD: Concurs.

18. L08-CSB-RBS-200801219-1

Complainant alleges that Respondent attempted to collect an account that had been paid prior to assignment and should not have been assigned for collection. Respondent states that it did not have records indicating payment on the account at the time of assignment and that it requested documentation from the consumer regarding prior payment but never received same. Respondent elected to close the complaint and noted the Complainant's dispute upon receipt of the complaint.

Prior History: Three complaints total from 2004-2006 for: 1) abusive language, 2) attempting to collect a disputed debt and 3) violation of a "CEASE and DESIST" request from a debtor. All three complaints were dismissed upon further response from Respondents' counsel. A 2007(illegal contact with debtor) and 2008 (collection of a disputed account) complaint are pending disposition.

Recommendation: Close with no action.

BOARD: Concurs.

19. L07-CSB-RBS-200704825-1

Complainant alleges that Respondent continued to contact him and dun him for monies owed after he and his attorney separately advised Respondent that he had filed for bankruptcy. Respondent stated that its files, which are programmed to update consumer files in the event of a bankruptcy filing, never reflected such information for the Complainant. Respondent also states that its database does not reflect any conversations with Complainant or his attorney where a bankruptcy was divulged. Respondent states that it is possible that the Complainant or his attorney may have spoken with the creditor and that the creditor failed to relay the information. Respondent states also that the information could have been irretrievably lost when the original creditor's electronic storage system suffered a complete data loss during the time when collections against the

Complainant were ongoing. Respondent, through its attorney, did reach a private agreement with the Complainant that Respondent would compensate Complainant \$ 425.00 in settlement of the dispute, although Respondent continued to maintain that it did not violate the law in any way.

Prior history: Identical to Item 18.

Recommendation: Close complaint upon receipt of confirmation from Respondent that the settlement was accepted and paid.

BOARD: Concurs.

20. L08-CSB-RBS-200801170-1

Complainant alleges that Respondent continued calling him concerning an account that does not belong to him. Complainant alleges that he was provided assurances from Respondent that the calls would cease, but alleges that Respondent called him again nearly two weeks ago. Respondent failed to respond to the complaint, despite accepting service of same on May 22, 2008.

Prior History: Failure to respond timely to a complaint (2005), paid \$500.00 civil penalty.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$1,000.00.

BOARD: Concurs.

21. L08-CSB-RBS-200801187-1

Complainant alleges that Respondent made derogatory notations on her credit report concerning an account that she alleges does not belong to her. Complainant further alleges that Respondent refused to remove the notations when she made them aware of her dispute. Respondent failed to respond to the complaint, despite accepting service of same on May 21, 2008. Respondent is also unlicensed.

Prior History: None.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$2,000.00.

FINAL RECOMMENDATION: Include a CEASE and DESIST unlicensed activity demand.

BOARD: Concurs.

22. L08-CSB-RBS-200800380-1

Complainant alleges that Respondent continued calling her concerning an account that she did not owe. Complainant states that Respondent provided her assurances that her number would be

removed but called her again after the number should have been removed. Respondent states that Complainant's number was removed in January (around the time the complaint was filed), and that one more call was made to Complainant's telephone number in August because an individual had provided Complainant's number in the course of a transaction that was later subject to collection.

Prior History: None.

Recommendation: Issue a letter of warning re: telephone harassment.

BOARD: Concurs.

23. L08-CSB-RBS-200800862-1

Complainant alleges that Respondent's agent advised her that adverse credit reporting had occurred relative to her collection account before the time period provided on the initial notice of collection had expired. Manager at Respondent agency stated that the agent's statement was inaccurate and that no reporting had occurred at the time Complainant contacted Respondent and that the agent simply misspoke and is less familiar with the company's reporting procedures. The Board initially voted to offer settlement by payment of a \$500.00 civil penalty and a Consent Order admitting to the unlawful activity.

Recommendation: Close with a letter of warning re: deceptive practices and credit reporting requirements.

FINAL RECOMMENDATION: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$100.00.

BOARD: Concurs.

24. L08-CSB-RBS-200801435-1

Complainant states that Respondent threatened him with prosecution for a Class D felony due to this failure to make payment on a debt. Complainant's attorney provided an audio recorded message wherein Respondent's agent made a statement indicating that Complainant had failed to make payment and that if payment was not received, that the account "would turn into a civil warrant" and that his delinquency was "a class D felony over here." Respondent states that its agents are trained to follow the FDCPA and that its agents would never make such a statement, because such information is not included in their training materials or talk-off scripts.

Recommendation: Authorize formal hearing with authority to settle by Consent Order and civil penalty of \$2,000.00.

FINAL RECOMMENDATION: Include a demand to CEASE and DESIST violating the FDCPA demand.

BOARD: Concurs.

MOTION was made by Worrick Robinson and seconded by Shannon Polen to approve the Legal report as submitted.

MOTION CARRIED

ADMINISTRATIVE ISSUES---INTERIM DIRECTOR, DONNA HANCOCK

Ms. Hancock presented the Board with a report of open complaints. She stated that there are 80 open complaints with 37 being older than 180 days.

Chairman Howard asked that the Board be provided with a report at their next meeting explaining why these 37 complaints are more than 180 days old. Attorney Bond stated that 11 of the 37 are against the same agency and that he has all 11 scheduled for Formal Hearings. Ms. Hancock stated that some of the remaining 26 older complaints will have been resolved today during Mr. Bond's complaint report but that she will provide a report at their next meeting.

Ms. Hancock presented the schedule of board meeting dates for 2009.

MOTION was made by Worrick Robinson, seconded by Elizabeth Trinkler, to approve the 2009 meeting calendar as submitted.

MOTION CARRIED.

Ms. Hancock presented a letter from the "Higher Education Services Corporation" requesting an opinion as to whether out-of-state law firms collecting debt and employing non-attorney debt collectors are required to be licensed. The Board determined that as long as the employees are collecting under the name of the law firm on behalf of the client, and not presenting themselves as a collection agency, a license will not be required.

REVIEW OF APPLICATIONS

Rodolfo Rodriguez, Jr. aka Rudy

Mr. Rodriguez answered "yes" to the question on his Location Manager application: Have you ever had accounts placed with an attorney or collection agency for collection. He stated that there were three medical bills and three retail/revolving accounts placed in collection in 2002. Mr. Rodriguez stated these bills were paid in full by May 2007.

The Board directed staff to inform Mr. Rodriguez that he is to provide more information on the "charge off" from the Capitol One account and submit his response to the board at their next meeting.

Dina Litke

Ms. Litke answered "yes" to the question on her Location Manager application: Have you ever had accounts placed with an attorney or collection agency for collection. She stated that the debt stemmed from a miscommunication as to who was to pay the bills for the children while she was going through a divorce.

MOTION was made by Worrick Robinson, seconded by Elizabeth Trinkler, to deny the application with the option to reapply and provide detailed information concerning the delinquent accounts and the account(s) in collection.

MOTION CARRIED.

OLD BUSINESS

There was no Old Business to discuss.

NEW BUSINESS

The Board asked Ms. Hancock to order a plaque, expressing their appreciation to Ms. Beverly Ann Strong, for her valuable term of service to the board. Ms. Strong's board member term recently expired.

MOTION was made by Elizabeth Trinkler and seconded by Worrick Robinson to adjourn.

MOTION CARRIED. Meeting Adjourned.

Bart Howard, Chairman

Shannon Polen

Elizabeth Trinkler, Vice Chairman

Worrick Robinson

Harold Nichols